

**\*E-FILED - 3/25/10\***

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES LUCIUS OLIVER,

Plaintiff,

v.

C. NOLL, Warden; et al.,

Defendants.

No. C 09-3840 RMW (PR)

ORDER DIRECTING  
PLAINTIFF TO LOCATE  
UNSERVED DEFENDANTS

Plaintiff filed a pro se civil rights action pursuant to 42 U.S.C. § 1983. On December 9, 2009, the court ordered service of the stated cognizable claims upon named defendants. On January 22, 2010, the court received a letter from the Salinas Valley State Prison's ("SVSP") litigation coordinator indicating that Correctional Officer Campos no longer worked at SVSP, but was employed at Kern Valley State Prison and that SVSP had no employment records for Correctional Officer Winlen. (Docket No. 53.) On January 29, 2010, the summons for Correctional Officer Meisner was returned unexecuted with the notation that SVSP sent it to a forwarding address, which was returned because that institution had no record of employment for Meisner. (Docket Nos. 54, 55.) On March 8, 2010, the court received another letter from the SVSP litigation coordinator indicating that although the summons was returned executed as to LVN Lindsey, in fact, an attempt to notify her at her last known address was unsuccessful. The letter also noted that LVN Lindsey's real name is Adora Anih. (Docket No. 61.) Accordingly,

1 four defendants have not been served.

2 With the additional information on Correctional Officer Campos, the court orders re-  
3 issuance of the summons upon him. Accordingly, the clerk shall re-issue summons and the  
4 United States Marshal shall serve, without prepayment of fees, copies of the complaint in this  
5 matter, all attachments thereto, copies of the court's December 9, 2009 order, and copies of this  
6 order on: **Correctional Officer Campos at Kern Valley State Prison, 3000 W. Cecil Avenue,**  
7 **Delano, CA 93215.**

8 Here, plaintiff's complaint has been pending for over 120 days, and thus, absent a  
9 showing of "good cause," is subject to dismissal without prejudice as to the unserved defendants.  
10 See Fed. R. Civ. P. 4(m). In cases wherein the plaintiff proceeds in forma pauperis, the "officers  
11 of the court shall issue and serve all process." 28 U.S.C. 1915(d). The court must appoint the  
12 Marshal to effect service, see Fed. R. Civ. P. 4(c)(2), and the Marshal, upon order of the court,  
13 must serve the summons and the complaint, see Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir.  
14 1994), overruled on other grounds by Sandin v. Connor, 515 U.S. 472 (1995). Although a  
15 plaintiff who is incarcerated and proceeding in forma pauperis may rely on service by the  
16 Marshal, such plaintiff "may not remain silent and do nothing to effectuate such service;" rather,  
17 "[a]t a minimum, a plaintiff should request service upon the appropriate defendant and attempt to  
18 remedy any apparent defects of which [he] has knowledge." Rochon v. Dawson, 828 F.2d 1107,  
19 1110 (5th Cir. 1987). If the marshal is unable to effectuate service through no fault of his own,  
20 for example, because plaintiff failed to provide sufficient information or because the defendant is  
21 not where plaintiff claims, and plaintiff is informed, plaintiff must seek to remedy the situation  
22 or face dismissal. See Walker, 14 F.3d at 1421-22.

23 Because plaintiff has not provided sufficient information to allow the Marshal to locate  
24 and serve Winlen, Meisner, and Lindsey, plaintiff must remedy the situation or face dismissal of  
25 his claims against said defendants without prejudice. See Walker, 14 F.3d at 1421-22.

26 Accordingly, plaintiff must provide the court with accurate and current location  
27 information for defendants Correctional Officer Winlen, Correctional Officer Meisner, and LVN  
28 Lindsey, also known as Adora Anih, such that the Marshal is able to effect service upon them. If

1 plaintiff fails to provide the court with the accurate and current identifying information and  
2 locations, within **thirty (30) days** of the date this order is filed, plaintiff's claim against the  
3 above named defendants will be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil  
4 Procedure; the dismissal will be without prejudice to plaintiff refiling his complaint with such  
5 information.

6 IT IS SO ORDERED.

7 DATED: 3/24/10

  
RONALD M. WHYTE  
United States District Judge